FIFTEENTH BIENNIAL REPORT

OF THE

Bureau of Labor and Industrial Statistics

PART I

Garnishment of Wages

STATE OF WISCONSIN
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PART I

GARNISHMENT OF WAGES

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In Wisconsin, as in several states, any suit upon a contract may be begun with *garnishment.* In other words, the principal suit may be accompanied *from the outset* by an ancillary suit against any person, firm, or corporation indebted, or supposed to be indebted, to the defendant in the principal action. The ancillary action, although a separate suit, proceeds simultaneously with the principal action until independently dismissed, or until the conclusion of the principal action. The ancillary action, intended to tie up the property of the principal defendant found in the possession of a third party, is instituted by a *garnishment summons,* and hence the defendant in the supplementary suit is known as the *garnishee defendant,* or simply as the *garnishee.*

The common law does not recognize the right of a creditor to funds belonging to his debtor while they are in the hands of a third party. On the other hand statute law has in many states provided a very effective means by which creditors may procure the payment of their claims by third parties. This has been done by means of *foreign attachment,* or *trustee process.* Beginning originally with a device whereby a judgment could be collected by requiring a third party to hold goods belonging to the *judgment* debtor for the benefit of the judgment creditor, the statutes of a number of states have extended the principle so as to permit the trusteeing of goods *in advance* of the judgment —in fact upon the commencement of the principal action, and hence before the plaintiff has established the justice of his claim against the principal defendant. The burden of proof is practically imposed upon the defendant, because he must dispose of the claim of the plaintiff before he can secure the release of property belonging to him, but held by a third party. Garnishment thus grants the plaintiff process analogous to an execution,

and grants it before judgment. Such a remedy is out of harmony with all other provisions of the law of remedies. Where domestic attachment is permitted, it issues only upon a showing of fraud on the part of the debtor, or deliberate effort to defeat the collection of a judgment when rendered. Such attachment issues only upon plaintiff giving a bond to indemnify the defendant against injury suffered should the attachment be dismissed. Likewise a temporary injunction issues only upon a showing that irreparable damage will result to the plaintiff unless it is issued; and in that case also a bond is required. In Wisconsin no bond is required for a garnishment and plaintiff is not liable for damages for any injury to the defendant in case the garnishment is found to have been improper.

Garnishment is commonly employed to tie up wages of workingmen, although in rarer instances it is resorted to in order to catch other property, such as a bank account, goods held in storage or in transit, insurance benefits, and the like. An examination of a considerable number of dockets of justice courts in Milwaukee, however, shows that an overwhelming majority of garnishment actions results in reserving wages due from, but not yet paid out by, employers.

There have been strong reasons for liberally extending the facilities of creditors in the collection of their claims. Viewing the matter superficially, it appears obvious that the state should assist, by every legitimate means, in the easy collection of just debts. No legal process is more effective or prompt than garnishment. To law-makers, urged to consider the difficulty of collecting many claims, it doubtless has appeared as a very slight hardship, if any, to compel the defendant to incur the delay necessary to put the plaintiff to the proof of his claim, especially when considering the substantial hardship to the creditor unable to collect a just debt. The annoyance and embarrassment caused by the notification of the garnishee, or third party, was of course understood. So was the detention of the property. Yet these were regarded lightly because they seemed necessary incidents to the collection of just debts.

But the embarrassments and inconveniences are in many cases far from trivial. In the first place a garnishment undoubtedly injures the defendant's standing with the garnishee. An employer, for instance, is quickly prejudiced against a workman

who, it appears, does not pay his debts. He at once begins to have doubts as to his integrity and efficiency. Moreover the employer is annoyed by the necessity of answering the garnishment summons. Many of the large employers of labor discharge, or threaten to discharge, employees after several garnishments. Hence, to avoid threatened garnishment a wage earner will sometimes pay an unjust claim. The following routine notice of garnishment shows the not unnatural attitude of employers:—

Chicago, Milwaukee & St. Paul Railway Co.

Assistant General Superintendent's Office, Room 15, Union Depot.

Milwaukee, ..., 191...

Mr. .....

Sir:— Your wages have this day been garnished by..... and ..... at Milwaukee. This suit is returnable before Justice O. E. Schwemer at 441 National Ave., ... 191.. at 9 a. m. You are hereby notified of said suit, and to take such action as may be necessary to protect your interests therein. The case should be settled before the return day unless you have a good defense. Three or more garnishments against an employe's record will be considered good cause for dismissal.

Yours, etc.,

A. J. Gamm,

For. P. C. Eldridge, Ass't Gen'l Sup't.

In the second place, it is a much greater inconvenience to a workingman to have his wages held back for several weeks, than the mere loss of interest on the money. Of course if he is discovered to have justly and legally incurred the debt, no sympathy need be wasted upon him. But if it should prove that he is not liable for the debt on account of exemption, or that he never contracted the debt, or that the amount of the debt was over-stated, or that he had a valid offset, he has been subjected unjustly to real hardships. When it is considered that most wage earners live close up to their incomes, it is easy to appreciate the inconvenience occasioned by holding back their wages even for a short time.

It is commonly claimed, indeed, that the burden of a garnishment is so great that the defendant is usually driven to settle,

irrespective of the justice of the claim, and irrespective of his right of exemption. The law of Wisconsin allows a wage earner having a family dependent upon him for support, an exemption of his earnings to the amount of $60 per month for three months preceding the service of the garnishment, but not exceeding $180 in all. Unfortunately it is impossible to verify with accuracy the charge that this exemption is practically defeated by the operation of the garnishment law. A very large proportion of the garnishment cases begun are *settled,* but it is not possible to ascertain the circumstances under which they are settled. They may be settled because the defendants realize that they have no defense, or by voluntary adjustment, or because of the pressure of necessity. If for the last named reason, the exemption law may be practically defeated.

Whether or not the right of prior garnishment is commonly abused, and hence works hardships and injustice, depends of course largely upon the spirit in which justice is administered. If the justice before whom the garnishment case is brought is scrupulously careful to protect the defendant against illegitimate use of the garnishment action, the hardships entailed are reduced to a minimum. A careful justice will scrutinize the claim to satisfy himself that it is apparently regular and containing no items not warranting a garnishment action (such for instance, as liquor bills,* or usurious interest); he will inquire whether the ordinary means of collection have been fairly tried; he will above all take pains to learn whether there is plausible ground for presuming that the accused has enjoyed a greater income than he is entitled to reserve under his exemption privilege. In addition, it *ought* to be the universal rule for the justice to demand the full fees in advance, not only as a test of the good faith of the plaintiff and of his confidence in the strength of the case, but also to protect the justice from temptation or suspicion of temptation. The gravity of this suspicion comes from the fact that a judgment against the defendant carries with it an order for costs, and if the accompanying garnishment action has successfully tied up any money, the costs are first defrayed out of the money "caught" before the judgment is satisfied. On the other hand if no money is "caught" it is difficult to collect the costs from the plaintiff.

* Laws of 1909, ch. 276.

It unfortunately appears to be the well-nigh universal practise of justices to demand of the plaintiff only the witness fee and "transportation" of the garnishee defendant to start the action, leaving the court fees to be assessed against the losing party in the action. There is room here for collusion or a corrupt bargain between the plaintiff and the justice, the understanding being that, if the plaintiff loses, the costs will be cut or altogether remitted. Under such an agreement it is of course entirely possible that the defendant *might* be justly dealt with, but the justice who in such a circumstance found for the defendant would be deciding adversely to his own interest as well as against that of the plaintiff. In other words he would not be disinterested, and in case of any doubt might unconsciously lean toward the side of the plaintiff. To avoid being misunderstood, it cannot be too emphatically declared that there is little evidence—indeed that there is rarely any ground even for *suspicion*—that such bargains are deliberately entered into by justices. It must be admitted, however, that, in extremely rare instances, such bargains have become notorious. Collusion of this sort is of course peculiarly vicious if entered into with a collection agency, or other concern or individual having frequent occasion to collect debts through garnishment proceedings.

While there is no reason to suspect that collusion has actually existed except in extremely rare instances, it should be pointed out that the common practise among the justices, though they are apparently conscious of no wrong doing, has nearly the same effect as collusion would have. By not collecting fees in advance, and by failing to press claims for costs against plaintiffs, the justices not only lay themselves open to the accusation of prejudice, but also encourage dubious and frequent actions. When a single witness fee is the only outlay demanded, there is no strong deterrent to the instituton of actions, and when the justice is lax in collecting from a plaintiff "where no money is caught" he is practically extending an invitation to "call again." The failure to collect in advance is a natural but not an inevitable incident of the justice court system. It is natural, because the fees are regarded as the private emoluments of the justice, and it is not unnatural to regard it as the justice's business whether he collects a personal debt. Laxity, however, is not inevitable, for in view of the possible bias of justices, it

would be perfectly proper to enact that no suit in garnishment should be entertained before the full costs had been paid into the court. To make this effective it would be necessary to provide penalties for failure to conform to the law. The civil courts in Milwaukee are not subject to the above mentioned temptation because the judges are salaried, and the fees are public property. Hence fees are collected strictly in advance and the judges have no personal interest in the outcome of the suit. The difference in organization results in a reversal of attitude on the part of the courts. The justices of the peace, whose fees depend upon the business that plaintiffs bring to them, instinctively sympathize with the creditor, while the judges of the civil court as instinctively sympathize with the defendant until the plaintiff has made out a clear case. That this difference of attitude is fully recognized is shown by the preference of plaintiffs for the justice courts. Although Chapter 544 of the Laws of 1909 provided for a practical abolition of justice courts in Milwaukee County, the decision of the Circuit Court (lately confirmed by the Supreme Court) that this law was unconstitutional enabled the justices to retain their commissions. Hence a plaintiff may bring an action in the civil court, or in any one of the justice courts, and the great majority of garnishment cases accordingly still go to the justices. Even lawyers who on grounds of principle are most favorable to the civil courts prefer to start their actions in justice courts because they regard the justice as more prompt, more effective, and more inclined to find in their favor. It is clear that for the state as a whole the establishment of civil courts could not be a solution of the possible abuses in justice courts under garnishment proceedings. Although the Supreme Court has sustained the objections to Chapter 544, chief of which is that it attempts by indirection to practically abolish the constitutional office of justice of the peace, it is argued that there could be no difficulty in a new act depriving justices in cities of the first class or counties of over 250,000 inhabitants of their jurisdiction in garnishment cases. It is true that such an act might have substantially the same effect as Chapter 544 of the laws of 1909, since from one-third to two-thirds or three-fourths of all actions in Milwaukee justice courts are begun with garnishment, and these courts would scarcely be profitable to the

incumbents if garnishment actions were taken away. But garnishment rests entirely upon a statute enacted since the constitution was adopted, and it is claimed that what the legislature has given, it may take away, if it deems it expedient. In passing upon the constitutionality of the law of 1909 the supreme court waived this question, but the opinion appears to intimate a doubt as to the validity of such a distinction between "the necessities and interests of such communities" (Milwaukee city and county) and those of other communities.

Civil courts may gradually supplant the justice courts in the other large cities of the state, but cannot be expected to do so in smaller places, so that it is at least desirable to legislate that justices shall actually collect fees in advance, even if no other action is taken. The fact that the present laxity in this regard originated innocently enough is no warrant for allowing it to continue. It is probable that the present custom arose from a good natured indulgence, fortified by the instinctive feeling that the plaintiffs were acting in good faith, and were deserving of sympathy and, in many cases, of assistance. On its face, this indulgence was at the expense of the justice's own pocketbook. If no money was caught, the costs were simply not collected; if the plaintiff and defendant were disposed to settle the case amicably out of court, they were encouraged by the agreement of the justice to cut the costs. But when such concessions became habitual, it was difficult to refuse them. Hence even if a justice desired to do so, he could not be strict in this regard without inviting creditors to forsake his court in the expectation of negotiating more satisfactorily with some other justice. It is probable, therefore, that the justices would welcome a statutory requirement that fees should be collected in advance. Of course, if a case is settled before it comes to trial, justice does not require as heavy costs. This is recognized by the civil courts, where instead of charging for the court's fees $1.50 each for the principal action and the garnishment action, the $3.00 is divided into $1.00 to start each of the actions, and $1.00 for the return day, the latter fee not being payable unless the case actually comes to trial. This arrangement should be taken into account in legislation for a mimimum scale to be paid in advance.

The only objection likely to be raised against requiring fees

in advance is that the law could be nullified by a system of rebating, the judge returning a whole or a part of his fees in the event of the failure of the plaintiff's action for any reason. This, however, if in pursuance of an agreement or an understanding, would be a corrupt bargain, and it is not deliberate dishonesty but unconscious bias that should cause concern.

A more radical proposal is that garnishment should be reduced to its original function as a remedy in aid of execution—that is after a judgment has first been obtained,—and in cases of alleged fraud, attempted fraud, or concealment. The arguments against such a change are mainly three:

1. That it would be difficult to catch anything after judgment.
2. That it would result in a contraction of credit.
3. That men would be careless about a judgment, while they would contest a case if garnishment were involved.

It will be observed that the first, which is a creditor's argument, and the third which is a debtor's argument, are virtually contradictory. A judgment once secured stands good for six years, unless sooner satisfied, and if a transcript is taken to the circuit court, it stands for ten years. Hence a garnishment in aid of execution would be as effective as a garnishment simultaneous with the principal action, if, as the debtor complains, a mere judgment has no more effect on a man than a dun. But the creditor complains that the debtor respects a judgment more than an ordinary bill and hence after judgment would take pains not to allow any of his property to lie where it could be garnished. A discussion of this issue on *a priori* grounds would be fruitless. But in Illinois, Missouri, and other states where garnishment requires either a prior judgment or a ground of attachment, experience seems to confirm the debtor's argument, namely, that men are careless of a judgment which involves no garnishment or attachment. Of course those who conscientiously try to pay their bills would not be likely to allow a suit to go against them by default. It would seem, therefore, that the proposed change in the law would affect most the very persons whom it is desirable to affect—the "deadbeats." The innocent would not suffer, as they do under the present law, and those who try to dodge claims would be reached more easily than at present, because they would be inclined to allow judgment to be taken against them by default. The creditor upon getting judgment would only have

to wait twenty days in order to deprive the debtor of the right of appeal, after which he could easily recover the debt by repeated garnishments. The debtor who now allows property to remain in the hands of a third party is in as certain peril of immediate garnishment under the present law, as he would be *after judgment* under the proposed change. Hence the dishonest debtor would profit nothing by the change.

The argument as to the contraction of credit practically stands or falls upon the answer to the preceding question. If it were true that it is no more difficult to recover on a garnishment action after judgment than at the commencement of the suit, there could be no motive for merchants to contract their credit, as far as legal remedies influence them. Here, again, the case of Chicago is instructive. Nowhere are there more elaborate and extensive credit systems than in that city, notwithstanding the fact that it is impossible to garnish before judgment except on grounds of attachment. There are apparently at least two very strong reasons for this. In the first place there are open to creditors an abundance of other legitimate remedies against dishonest debtors. The second, and by far the more important, explanation is to be found in the fact that in retail business, as in wholesale trading, banking, stock exchange transactions, and practically all commercial affairs, credit depends fundamentally not upon legal safeguards, but upon the confidence of the creditor in the honesty of the debtor. It is true that this confidence is oftener misplaced in retail trade than in other lines of business, yet it does not necessarily follow that it is imprudent to extend credit with less caution in retail trading than is customary in large transactions. Though the number of risks assumed is large, the aggregate of the risks is comparatively small, and there is an element of safety in the wide distribution of the aggregate among numerous debtors. It is an open question whether or not widespread credit is advantageous to the working classes; but the disadvantage comes, if at all, from the seductive ease with which purchases can be made, through the credit system, beyond the means of the purchasers, rather than through the shifting upon the shoulders of honest debtors, of the burden of the unpaid debts of the dishonest; for the intelligent tradesmen, who ultimately succeed, will not extend credit where experience indicates that it is imprudent to assume the risk.

There is one class of creditors who might suffer, if they were unable to garnish at the beginning of the principal suit. This class consists of boarding and lodging-house-keepers. Dockets examined in Milwaukee, especially those of the south side justices, reveal the fact that many of the garnishment suits are brought against boarders or lodgers who have suddenly left without paying their rent or board bills. This practise is very common among certain immigrants, especially the Polish. Some men continually dodge their debts in this way, taking one alias after another, thus making identification very difficult in many cases. For this reason, it might work a general hardship if the creditor of a lodger or boarder were obliged to procure a judgment before garnishing, since before the judgment had been secured the defendant might have withdrawn his pay in full, and disappeared. Therefore, if a change is made in the present law, it would be well to make a special provision for debts of this nature.

The following table showing the results of an investigation of the dockets of certain justice courts in Milwaukee, covering about half the calendar year of 1909, reveals many points of interest in connection with this inquiry. Thus it will be seen that garnishment actions constitute the chief business of justice courts. Although the justices have jurisdiction in "straight" suits, replevins, attachments, unlawful detainer actions, and "state" (or bastardy) cases, these combined appear to be decidedly fewer than the garnishment actions alone. Before one justice, the garnishment actions were only one-third of the total. In two courts, more than half, and in a fourth, nearly four-fifths of the cases were begun with garnishments. In the civil court, however, only about one-fifth of the cases were begun with garnishment, although the jurisdiction of the justice courts and the civil courts are concurrent. All of the above estimates were based upon tests covering the first half of the year 1909, the double action in each garnishment case being counted as a single suit. The garnishees were with extremely rare exceptions employers of the principal defendants. The heavy preponderance of garnishment actions in the petty courts not only clearly indicates the relative importance of this class of actions, but also establishes a fair presumption,—though indeed not proof,—that garnishment actions are too lightly and easily brought.

Court.	Proportion of garnishment cases.	No. of garnishment cases noted.	Object of the Debt.						Service on Principal Defendant.		Cases Not Tried.			Sworn away.	Judgments.			
			Merchandise.	Board.	Debtor.	Loan.	Labor.	Other.	Personal.	Publication.	Settled.	Dismissed.	Not continued on docket.		To plaintiff.	To plaintiff by default.	To defendant.	To defendant by default.
A	55%	159	27	5	7	6	3	8	43	27	42	25	59	5	23	11	5	2
B	58	99	26	15	2	8	1	5	28	68	1	8	35	5	44	25	6	1
C	78	81	9	27	1	5	6	2	38	35	7	5	3	13	44	27	9	1
D	33	201		not	giv	en.			39	37	151	1	.....	10	37	19	2	1
E	21	77	14	4	1	5	1	3	52	15	9	45	8	.....	12	3	3	2

It is true that the wage earner is protected by numerous provisions against abuse of the process, but in practise these are of little benefit to him. In the first place he may plead a liberal exemption, if he has a family dependent upon him, but until the garnishee is formally released by the court, the defendant's wages are effectually tied up, unless the employer is willing to pay at his own risk, and this is rarely the case. Again the defendant is entitled to demand that the plaintiff put up security for costs, but unless a lawyer is retained, this demand is not likely to be made. Finally, it was provided by a statute of 1909, that the principal defendant could secure the release of the garnishee, and hence of the wages due and payable, by furnishing a bond, but of course very few wage earners are able to furnish a bond.

Probably the greatest hardship under the present garnishment statute is that which results from the long period during which wages are tied up. At present the summons is returnable within 6 to 15 days. In practise it is necessary to make the summons returnable in not less than 7 or 8 days, in order to give the constable or sheriff time to serve the summons and yet give the defendant the six days notice which is required. Therefore, a wage earner who wishes to defend a suit must suffer his wages to be tied up not less than a week. In practise the justices consult the convenience or preference of plaintiffs, and the summons is most often made returnable in 14 days.* Plaintiffs undoubtedly frequently select as late a date as possible, for the purpose of embarrassing a debtor by depriving him of the use of his wages, and so forcing him to settle. If the constable fails to find the principal defendant, service by publication becomes necessary, and this necessitates an adjournment of not less than 20 days. There is a prevalent feeling that constables do not always exercise all of the zeal that they might in obtaining personal service. It must be remembered, of course, that it is not always easy to get personal service upon debtors, because of the obscurity, the occupations, the habits, and the environment of many debtors, and because debtors not infrequently contrive to avoid personal service for the purpose of postponing judgment. Debtors anxious to evade their just obli-

* This is true of Milwaukee. It appears to be less true of other parts of the state.

gations find it advantegeous to postpone service of legal process. There are undoubtedly many cases in which it is practically impossible to reach the principal defendant in any other way than by publication. Nevertheless, a comparison of the dockets of several courts shows plainly that some officers are much more successful than others in securing personal service. In two courts personal services and services by publication were nearly equal in number, in one personal were nearly twice as numerous as publication services, while for the civil court, the sheriffs succeeded in serving personally more than three times as many defendants as were served by publication. Delay, which is desired by the dishonest debtor, is nearly always a serious injury to an honest defendant.

An examination of that part of the accompanying table relating to cases not tried will readily show that there is little uniformity among the justices' dockets in the way in which they record cases not actually brought to trial. Some justices do not enter such cases at all, others enter but do not continue them, others enter in full until the case is disposed of, and then abruptly close the case with the word "settled," or "dismissed." Hence it would be unsafe to draw conclusions as to the proportion of the cases settled out of court, from the proportion of such cases found in all the dockets examined,—but in three courts in which each case appears to have been docketed as soon as an affidavit was filed, the ratios of cases settled, dismissed, or dropped to cases brought to judgment were respectively 126 to 28, 152 to 39, 62 to 15, or an average for the three of 340 to 82. In other words it appears that 80% of all of the garnishment cases entered and not sworn away on an affidavit of prejudice are disposed of without trial. It is of course impossible to ascertain the terms of settlement, or the grounds of non-continuance or dismissal. Full payment of claim, partial payment, various compromises, entreaty, failure to "catch" anything, and exemption rights are all grounds for disposing of cases before judgment. The dockets rarely show the motives of plaintiffs in allowing cases to drop, and they even less frequently show the considerations which induced defendants to settle, but it is inconceivable, especially in view of the strong popular impression, that of the 80% of cases that are settled without joinder of issue, there are not a fair proportion that are

settled simply because of the pressure of necessity imposed upon the debtor whose wages are tied up.

The argument for limiting the scope of the garnishment remedy is very substantially strengthened by an examination of the laws of other countries and particularly those of other states, with reference to the protection of wage earners with families, and of debtors generally, against garnishment.

England and Germany, our chief industrial competitors, grant complete exemption of all wages of manual wage earners (who are heads of families). Norway and Brazil also grant complete exemption. In our own country there are six states which practically do the same. Arkansas allows no garnishment for a debt of less than $200, and railway companies cannot be made garnishees (Ark. Digest, 1904, sec. 3695). Florida exempts wages for personal service or labor of a head of a family (Fla. G. S. 1906, sec. 2530). Georgia exempts all daily, weekly, or monthly wages of all journymen, mechanics, and day laborers in the hands of employer or others (Ga. code 1895, sec. 4732). Louisiana exempts wages for personal service, but this is interpreted by the Louisiana court to apply only to unskilled manual labor, and artisans are not exempt (Rev. Laws 1904, sec. 1696. State ex rel I. X. L. G. Co. v. Land, 1902, 108 La. 512). Missouri exempts from garnishment all wages of railway employees, except for sums of over $200 (Mo. R. S. 1909, sec. 2427). Practically no actions for debts of wage-earners are for more than $200, and it is generally, if not universally, the case that railway employees are the principal class of workmen elsewhere subject to garnishment, as railways pay high wages and are accustomed to hold back two weeks' pay continuously, making a garnishment almost surely successful provided a judgment is secured. Moreover, in Missouri each head of a family may hold exempt wages to the amount of $300 (less 10%) in lieu of other exempt property, and there can be no garnishment except for 10% of his wages earned during the last thirty days (Rev. Stat. 1909, sec. 2183, 2415). Hence it will be seen that while Missouri's laws do not cover all possible cases, they must make the garnishment of wages very rare. Pennsylvania exempts wages of laborers in the hands of employers (Purdon's Digest, sec. 144). Texas exempts all current wages from attachment, garnishment, or execution. (Const. 1876, Art. 16, Sec. 28, Civil St. Sec. 2395).

For the purpose of comparing procedure in garnishment in the several states, it will be convenient to classify the states in three groups. By far the largest group consists of those states which require either an affidavit of attachment or a judgment before garnishment is available. Another group of six states and one territory includes those which do not require an affidavit of attachment, but which do require the filing of a bond by the plaintiff before the garnishment summons or writ is issued. Finally, in a group of twelve states, Wisconsin being among the number, plaintiffs may freely garnish without incurring any liability for damages resulting from wrongful garnishment.

Within the first group, the grounds of attachment vary considerably. Thus, by reference to column 3 in the appendix of this bulletin, it appears that Delaware and Lousiana allow only non-residence and absconding as grounds of attachment and hence of garnishment. It appears that Georgia, Kentucky, North Carolina, Tennessee, and Virginia, recognize as grounds of attachment the concealment or removal of property as well as non-residence and absconding. In addition to the grounds already named, fraudulent contraction of the debt is recognized by the District of Columbia, Illinois, Indiana, Iowa, Maryland, Mississippi, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Utah, West Virginia, and Wyoming. Very broad grounds of attachment are recognized in California, Colorado, Idaho, Missouri, Montana, Nevada, and Oregon.

In the seven states last named, a plaintiff would have little difficulty in finding a ground of attachment, which would enable him to garnish. But it would be necessary to furnish a bond. These states, therefore, differ in the form, rather than in the substance, of their provisions for garnishment from the states in the second group which do not require a ground of attachment, but which require a bond of the garnishing plaintiff. The states in the second group are Alabama, Arizona (Terr.), Arkansas, Kansas, Oklahoma, Texas, and Washington.

The last group, offering no safeguard against improper garnishment, includes the six New England states, Florida (which, however, totally exempts all wage earners), together with Michigan, Wisconsin, Minnesota, North Dakota, and South Dakota.

The degree of protection enjoyed by wage earners against unfair garnishment of course depends upon the amount of exemption as well as upon procedure, and within each of the three groups as here arranged, the states differ widely in the amount which may be protected against execution. But owing to the varying terms in which exemptions are stated, it is difficult to arrange the list of states in the order of the generosity of exemption allowed to debtors. (A careful summary of wage exemption laws, prepared by Margaret A. Schaffner, has been published by the Wisconsin Free Library Commission).

It is commonly assumed that the Wisconsin exemption is liberal. At first glance it so appears. But it is not in fact liberal as compared with many states. It allows no more than $60 a month nor more than $180 in three months and this exemption is rendered still less liberal by virtue of an arrangement, not common in other states, which requires a debtor to include the wages of his minor children in the exemption which he may claim. Any earnings of the debtor and his children combined which exceed $60 per month or $180 in three months are subject to garnishment. In the typical wage earner's family, therefore, the exemption is easily covered.

The bill herewith submitted, embodying the reform in procedure advocated in this bulletin, has been drafted by Attorney George H. Katz of Milwaukee, who suggested this investigation.

(Additions are in Italics.)

AN ACT TO AMEND PROCEEDINGS IN GARNISHMENT IN JUSTICE COURT AND IN CIVIL COURT.

The people of the state of Wisconsin, represented in the senate and assembly, do enact as follows:

Section 1. Section 3597 of the Wisconsin Statutes of 1898 is hereby amended to read as follows:

Section 3597. A justice of the peace shall issue a summons returnable in three days in every case where he is satisfied from the facts and circumstances stated in an affidavit of the plaintiff or other competent witness that the plaintiff has a subsisting and unsatisfied cause of action upon a contract, express or implied, against the defendant and that the defendant is a non-resident

of the county or is about to remove from the county with intent not to return thereto to reside, or that the defendant is about fraudulently to remove, convey or dispose of his property so that the plaintiff will be in danger of losing his debt or demand unless such summons be granted. *Whenever an affidavit shall be filed in garnishment proceeding pursuant to section 3716, of the Wisconsin statutes, as herein amended, the justice shall issue, in the principal action, a summons returnable in three days as herein provided.*

Section 2. Section 3716 of the Wisconsin statutes of 1898 is hereby amended to read as follows:

Section 3716. Whenever an action shall have been commenced, by summons, *returnable in three days under the provisions of section 3597 of the Wisconsin statutes of 1898, as* amended herein, upon contract, express or implied, or by warrant of attachment in a justice's court, if the plaintiff or some one in his behalf shall make and deliver to the ~~officer having~~ *justice issuing* such summons or attachment an affidavit stating that the affiant has good reason to believe that some person (naming him) is indebted to the defendant or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant to any or either of them, not by law exempt from sale on execution, *and containing a further statement that deponent knows or has good reason to believe either,*

1. That the defendant is a foreign corporation, or if created under the laws of this state, that all the proper officers thereof on whom to serve a summons do not exist, are non-residents of the state or cannot be found;

2. That the defendant is not a resident of this state;

3. That the defendant has absconded or is about to abscond from this state;

4. That the defendant has removed or is about to remove any of his property out of this state, with intent to defraud his creditors;

5. That the defendant resides in any other county and more than one hundred miles from the residence of the justice;

6. That the defendant contracted the debt under fraudulent representations;

7. That the defendant so conceals himself that the process of summons cannot be served upon him;

8. That the defendant has fraudulently conveyed or disposed of or is about fraudulently to convey or dispose of any of his property or effects so as to hinder or delay his creditors;

9. That the action is brought against the defendant as principal upon an official bond to recover money due to the state or some county or other municipality therein;

10. That the defendant has incurred the indebtedness upon which suit is brought in the principal action, being for board or accommodation at a hotel, inn or boarding house, with the intent to defraud the proprietor or manager thereof, there being no express agreement between defendant and such proprietor or manager for credit to be given for such board or accommodation; or that defendant has incurred such indebtedness by obtaining credit at a hotel, inn or boarding house by a false show or pretence; or that defendant after obtaining credit or accommodation at such hotel, inn or boarding house has absconded or surreptitiously removed his baggage therefrom without paying for his board or accommodation;

and demand that he shall summon such person as garnishee such ~~officer~~ *justice* shall summon such person in writing to appear before the justice, on the return day of such summons or attachment, to answer touching his liability as garnishee. Such affidavit may be amended with the same effect as is provided in section 3702.

Section 3. Section 3722 of the Wisconsin statutes of 1898 is hereby amended to read as follows:

Section 3722. If the plaintiff shall not be satisfied with the answer of the garnishee, or if either party shall desire a trial the justice shall enter that fact on his docket and the case shall forthwith be proceeded with and tried upon the issue formed by the affidavit and answer, as in other actions commenced by summons, and if upon the trial of any such issue property or effects, not by law exempt from seizure upon attachment or execution, shall be found in the hands of the garnishee or it shall be found that he was indebted to the defendant and that such indebtedness was not exempt, the justice or jury shall assess the value thereof and the garnishee shall hold the same subject to the further order of the justice; but if, upon such trial, it shall be found that the property or effects in the hands of the garnishee or his indebtedness to the defendant is exempt *or if the issue formed by the*

affidavit and answer, as to any of the defenses in the answer contained, be found in favor of the defendant, the justice shall forthwith enter an order in his docket discharging the garnishee; and if it shall be found that any part of such property or effects or such indebtedness is exempt *although the issue formed by the affidavit and answer, as to other defenses therein contained except that setting forth said exemption be decided in favor of plaintiff,* he shall enter an order in his docket discharging the garnishee from all liability to the plaintiff as to the property or effects or the amount of indebtedness so found to be exempt. Either party may appeal from such finding and order to the court to which an appeal might be taken from a judgment in the action, but such appeal must be taken separately from any appeal from such judgment.

Section 4. Section 3723 of the Wisconsin statutes of 1898 is hereby amended to read as follows:

Section 3723. The defendant in the original action may appear and defend the proceedings against the garnishee upon the ground that the indebtedness of the garnishee or any property held by him is exempt from execution against such defendant or for any other reason is not liable to garnishment, or upon any ground upon which a garnishee might defend the same, and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not appear therein; but such defense by a garnishee shall not preclude the defendant from any right he may have to a new trial in such action under the provisions of section 3666 and 3667. And the garnishee, if he has property in his possession or under his control belonging to the defendant, may further answer that said property is exempt from execution, *or defend on any of the grounds that the defendant might defend the same,* but said garnishee shall not be compelled to set up said ~~exemption~~ *defenses* and shall in no manner be held liable to said defendant or to any other person for failure to set up such ~~exemption.~~ *defenses.*

Section 5. Section 27 of chapter 549 of the laws of 1909 is hereby amended to read as follows:

Section 27. 1. Whenever any action shall have been commenced by summons *returnable in three days under the pro-*

visions of section 3597 of the Wisconsin statutes of 1898, as herein amended, upon contract, express or implied, or by warant of attachment in said civil court, or shall be pending therein, if the plaintiff or some one in his behalf shall make and deliver to the clerk or any judge of said court an affidavit stating that the affiant has good reason to believe that some person, (naming him) is indebted to the defendant, or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant, to any or either of them not by exempt exempt from sale on execution, *and containing a further statement that deponent knows or has good reason to believe either,*

1. That the defendant is a foreign corporation, or if created under the laws of this state, that all the proper officers thereof on whom to serve a summons do not exist, are non-residents of the state or cannot be found;

2. That the defendant is not a resident of this state;

3. That the defendant has absconded or is about to abscond from this state;

4. That the defendant has removed or is about to remove any of his property out of this state, with intent to defraud his creditors;

5. That the defendant resides in any other county and more than one hundred miles from the residence of the plaintiff;

6. That the defendant contracted the debt under fraudulent representations;

7. That the defendant so conceals himself that the process of summons cannot be served upon him;

8. That the defendant has fraudulently conveyed or disposed of or is about fraudulently to convey or dispose of any of his property or effects so as to hinder or delay his creditors;

9. That the action is brought against the defendant as principal upon an official bond to recover money due the state or some county or other municipality therein;

10. That the defendant has incurred the indebtedness upon which suit is brought in the principal action, being for board or accommodation at a hotel, inn or boarding house, with the intent to defraud the proprietor or manager thereof, there being no express agreement between defendant and such proprietor or manager for credit to be given for such board or accommodation; or

that defendant has incurred such indebtedness by obtaining credit at a hotel, inn or boarding house by a false show or pretence; or that defendant after obtaining credit or accommodation at such hotel, inn or boarding house has absconded or surreptitiously removed his baggage therefrom without paying for his board or accommodation;

Thereupon said clerk or judge shall issue a summons to such person to appear before said court on the return day of such summons or attachment, to answer touching his liability as garnishee. Such affidavit may be amended with the same effect as is provided in section 3702 of the statutes.

2. Such summons shall be issued under the seal and be returnable before said court, shall be signed by the clerk or a judge thereof, shall be otherwise substantially in the form provided by section 3717 of the statutes and shall be served by a deputy sheriff of said Milwaukee county. All proceedings in garnishment in said civil court, except as herein otherwise provided, shall be governed by the provisions of chapter 158 of the statutes, relating to garnishment proceedings in courts of the justices of the peace, *as amended by this act.*

APPENDIX.

The following table was prepared for this bureau under the direction of Prof. W. U. Moore of the Law School of the University of Wisconsin.

State.	Statutes.	Showing. [1]	Section requiring bond. [2]	Remarks.
Alabama..	Code 1907. Secs. 4300-05. 4312-13, 4695, 4700.	None.	4303	
Arizona.....	R. S. 1901, Sec. 363.	None.	364	
Arkansas.....	Digest 1904, Secs. 3694-5.	None.	3694	3695. No garnishment for $200 or less, and a railway company not to be garnishee.
California	Code of C. P., 1901, Secs. 537-9, 543, 555, 866-9.	5, 11.	543	
Colorado.....	R. S. 1908. Secs. 3766-7, 3777-8.	1, 2, 3, 4, 5, 6, 8, 9, 10.	3777	
Connecticut	R. S. 1902, Sec. 880.	None.		C. 95. laws of 1903, exempts $25 from attachment as well as execution.
Delaware.....	Stat. Laws, Del., 1893, Ch. 104, Secs. 1, 2, 4, 19.	1, 5, 6.	2, 4	Garnishment available only for debts of over $50.
Dist. of Columbia	Code, 1906, Secs. 445-7, 456, 468.	1, 2, 3, 4, 5. 6.	456	
Florida.....	G. S. 1906, Secs. 2130, 2144.	None.		2530. Wages for personal service or labor of head of family are exempt. 2145. Garnishee not to retain more than twice the amount of the claim.
Georgia.....	Code 1895, Secs. 4510-11, 4549, 4732.	1, 2, 3, 5.	4549	4732. For all journeymen, mechanics, and day laborers, daily, weekly, or monthly wages are exempt in hands of employers or others. Attachment of goods may issue for purchase money, but cannot be levied by garnishment.
Idaho	Code 1908, Secs. 4302, 4307 sub. 5, 4308.	5, 11.	4307 sub. 5	

Note 1. Key to numbers in this column.
1. Absconding.
2. Concealment of property.
3. Removal of property.
4. Fraudulent contraction of debt.
5. Non-residence.
6. Foreign corporations.
7. To recover money due the state, etc., on a bond.
8. For work, labor or services.
9. For goods which should have been paid for on delivery.
10. For farm products, provisions, rent, furniture, clothing, fuel.
11. Contract for direct payment of money without security.

Note 2. Where garnishment before judgment is incidental to attachment, the section showing this fact is given. Otherwise the column shows the section which requires a bond before the institution of garnishment action. The bond is commonly required for the protection of *resident* defendants only.

State.	Statutes.	Showing.	Section requiring bond.	Remarks.
Illinois	Annotated Stat. 1896. Chap. 11. par. 1, 2, 4, 15, 21.	1, 2, 3, 4, 5.	Ch. 11. par. 21.	
Indiana	Burns' Annotated Stat. 1908. Secs. 947, 966, 980, 990.	1, 2, 3, 4, 5, 6.	943	943 is construed to require an affidavit of attachment to be *filed*, though it need not be *issued*. *Pomeroy v. Beach*. 149 Ind. 511. *Resident* debtors are entitled to reserve $600. (Ib.) Employer may relieve himself of liability for *exempted* wages by paying employee.
Iowa	Code 1897. Secs. 3878, 3885, 3897, 3907, 3935.	1, 2, 3, 4, 5, 6.	3935	
Kansas	Gen. Stat. 1909. Secs. 5821, 5823, 5838, 6397, 6412, 6415.	None.	5823	6127. Three months wages exempt.
Kentucky	Code 1895. Secs. 194, 196.	1, 2, 3, 5.	203, Sub. 3	
Louisiana	Code of Practice. 1901. Secs. 239, 243, 245, 246, 259.	1, 5.	246	Rev. Laws 1904. sec. 1696. exempts wages for personal service. (As construed by the courts. this does not apply to skilled laborers.)
Maine	Rev. Stat. 1903. Chap. 88. Sec. 1.	None.		55. No person to be adjudged trustee for wages due up to $20 except for necessaries
Maryland	Pub. Gen. Laws. 1904. Art. 9. Secs. 4, 10, 19, 32, 37.	1, 2. 3, 4, 5.	8. 11, 12.	$100 exempt.
Massachussetts	R. L. 1902, Ch. 189. Secs. 1, 40, 65, Chap. 168, Sec. 1. Ch. 167. Sec. 80.	None.		189. Sec. 27. Wages to the amount of $20 are exempt from attachment unless the writ states that the debt was for necessaries, in which case $10 exempt.
Michigan	C. L. 1897. Secs. 990. 10.600, 10,646.	None,		
Minnesota	R. L. 1905, Secs. 4229, 4256.	None.		
Mississippi	Code 1906. Secs. 129, 133, 137, 140.	1, 2. 3, 4, 5, 6, 7. and shipping or banking frauds.	137 140	